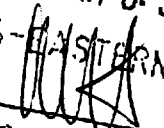


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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISIONFILED-CLEIN
U.S. DISTRICT COURT
02 APR 17 AM 8:31
TEXAS-EASTERN
BY IN RE: CERTAIN ASSETS OF §
ALLEN PETTY, JR., A.K.A. AL PETTY §

NO. 6:02-CV-148 (TJW)

**ORDER CONVERTING TEMPORARY RESTRAINING ORDER
TO A PRELIMINARY INJUNCTION**

Before the Court is the Government's Motion to Convert Temporary Restraining Order to a Preliminary Injunction (#4). Having conducted an evidentiary hearing on the matter and considered the parties' briefing, the Court GRANTS the Government's motion and converts the temporary restraining order entered in this cause to a preliminary injunction.

I.

On April 4, 2002, the Government filed a motion for the entry of an ex-parte, pre-indictment temporary restraining order to restrain certain accounts and assets under the control of Allen Petty, Jr., a.k.a. Al Petty ("Petty"). After reviewing the motion and the accompanying affidavit of F.B.I. Special Agent James A. Hersley, the Court granted the Government's motion and issued a temporary restraining order pursuant to 21 U.S.C. § 853(e)(2), as incorporated by 18 U.S.C. § 982(b)(1). In conformity with the statute, the Court then conducted a hearing on the temporary restraining order on April 11, 2002. At the hearing, the Court also heard evidence on the Government's motion to convert the restraining order to a preliminary injunction in accordance with 21 U.S.C. § 853(e)(1)(B). Having heard

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evidence on the matter and considered the arguments and briefing of counsel, the Government's motion to convert is now ripe for decision.

II.

Pursuant to 21 U.S.C. § 853, which is incorporated by reference into 18 U.S.C. § 982, the Government may procure a pre-indictment restraining order or injunction to preserve assets potentially subject to forfeiture. *See United States v. Floyd*, 992 F.2d 498, 500-501 (5th Cir. 1993). To secure such an order, the Government must demonstrate that 1) there is a substantial probability that the United States will prevail on the issue of forfeiture; 2) that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and 3) that the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered. 21 U.S.C. § 853(e)(1)(B); *United States v. Thier*, 801 F.2d 1463, 1466-67 (5th Cir. 1986). Property involved in, derived from, traceable to, or constituting the proceeds of mail fraud, wire fraud, or money laundering must be forfeited upon conviction for such an offense. 18 U.S.C. § 982(a).

Here, the Government alleges Petty has constructed a Ponzi or "pyramid" scheme under the auspices of a cell phone/marketing business with the aim of defrauding investors. The Government further alleges that in connection with his scheme to defraud, Petty has made use of the mails and interstate wires in violation of 18 U.S.C. §§ 1341 and 1343, and that he has consummated financial transactions with the proceeds of his scheme in violation of the federal money laundering statutes, 18 U.S.C. §§ 1956 and 1957. Accordingly, the

Government seeks to persuade the Court that there is a substantial probability it will convince a jury beyond a reasonable doubt that Petty violated one of these criminal statutes, that failure to enter the order will result in the property being unavailable for forfeiture, and that the need to preserve the availability of the property outweighs any potential hardships. Based on the evidence presented, the Court is persuaded.

III.

The Government presents two evidentiary sources in support of its motion for preliminary injunction: 1) the affidavit and testimony of Special Agent Hersley and 2) a two hour-long video tape of Petty and his most strident "investors" at what can be characterized as a new investor recruiting seminar. In his affidavit and testimony, Special Agent Hersley describes his investigation of Petty's organization, and the Court finds Special Agent Hersley's testimony credible. According to Hersley, Petty is the incorporator, director, and president of Independence 2000 America, d/b/a Telecom 2000 Network. Petty advertises Telecom 2000 as a total communications network in which a person can purchase cellular phone service, long distance service, and a business that Petty guarantees will produce financial returns of 500% to 1100% over the initial investment. Petty operates Telecom 2000 out of a trailer house located on an approximately 20 acre rural tract in Overton, Texas.

Telecom 2000 solicits new investors through random telephone solicitation, internet advertising, and fax blasting (the use of fax machines with automatic dialing equipment). Potential investors are directed to call a telephone number and listen to a fourteen minute recorded message from Petty. The fourteen minute message is used as a screening device

to identify individuals that might be inclined to invest with Petty. The potential investor is then directed to call Telecom 2000's headquarters in Overton, Texas. During this telephone call, the potential investor provides background information to a Telecom 2000 employee. An information sheet entitled "Ticket to our Opportunity-Conference Call" is then sent by fax to the investor and a background sheet concerning the potential investor is faxed to the potential investor's "sponsor." The sponsor often then contacts the potential investor to promote Telecom 2000.

As a final step before investing, the potential investor must participate in a national conference call conducted by Petty. Petty conducts these conference calls three times a week, including on the calls both potential investors and experienced sponsors. The calls last approximately three hours. After the call, if the potential investor wants to invest, another flyer called the "Rest of the Story" is faxed to the investor. The potential investor then becomes an actual investor by sending a cashier's check, either by the U.S. mail, Federal Express or UPS, to Petty in Overton, Texas.

For a minimum initial investment of \$1315.88, an investor is said to purchase a "Telecom 2000 business" which Petty refers to as a "Pro 1." Telecom 2000 then enrolls the new investor in a cell phone and long distance service contract with a cell and long distance provider and promises to reimburse the investor for the service charges. The investors are also promised a return on their investment of \$3779.34 over a six-month period. The new business owner, identified as a "rep," can upgrade his or her business by purchasing additional business increments of one or more at a cost of approximately \$1000 per business

increment. Each upgrade is referred to as "Pro 2, Pro 3, ect..., up to a Pro 50. Petty advertises that an investor can come into the program as a Pro 50 at a cost of 51,869.81, with a guaranteed return of \$297,972.24 in six months. A "rep" is not required to perform any type of service in connection with the purchase of the Telecom 2000 business. However, a rep can become a sponsor by soliciting other individuals to purchase Telecom 2000 businesses. For each Pro 1 a sponsor brings into the organization, the sponsor receives a guaranteed payment of \$3,625. Based on Hersley's examination of bank records, Telecom 2000 receives approximately \$170,000 in cashiers' checks from investors each day.

Special Agent Hersley first became aware of Petty's Telecom 2000 operation in January 2002 when Southside Bank, Tyler, Texas, filed a Suspicious Activity Report (SAR) regarding Petty. The SAR stated that Petty conducted a suspicious transaction at the bank on December 14, 2001. Bank records indicate that on December 13, 2001, two individuals named Paul Erickson and Randall Jarvis opened a charity account under the name "The Church of Jesus Christ Disciples," an unincorporated church, a.k.a. "Christian Disciples International," with a \$100 cash deposit. On December 14, 2001, Petty deposited two checks totaling \$372,673.67, drawn on Telecom 2000's Southside account and signed by him. On the same day, Petty opened a charity account in the name "Face to Face Ministries." The Church of Jesus Christ's Disciples then made a donation to Face to Face Ministries by a check in the amount of 363,356.82, which was deposited by Petty. While opening the accounts, Petty made remarks to bank employees that he was opening the accounts to protect his money from the government. The SAR stated that the documentation and demeanor of

the individuals involved left bank employees with suspicions as to the legitimacy of these charitable transactions. A few days after opening the accounts, Petty and his brother transferred \$140,000 back to Telecom 2000 from the Face to Face account as a "loan."

Through his investigation, Hersley also learned that in January 2002 Petty became concerned with the volume of cashiers' checks being received from investors and began hoarding the checks in a desk drawer at the mobile home in Overton. On March 7, 2002, Petty and Sabrina Wei, an individual employed by Petty to review Telecom 2000's business records and a resident of Canada, removed approximately 3.5 million of the approximate four million dollars in checks from the drawer. These funds are currently unaccounted for.

On March 31, 2002, Petty distributed a severance agreement to the several employees of Telecom 2000. In this document, Petty describes what he calls a "Gratitude Pay Plan" in which he will pay each employee gratitude pay for up to ten months. The document warns employees, however, that gratitude pay to all employees will cease immediately if any employee files suit against Telecom 2000 or Petty, or if anyone makes a negative report to any regulatory agency such as the FBI, Attorney General's Office, Federal Communications Commission, Federal Trade Commission, or various other agencies. Petty also states he is selling Telecom 2000 "due to recent events, too complex and debilitating to enumerate." Recently, Petty moved the computer and telephone equipment of Telecom 2000 from his Overton, Texas location to Vancouver, Canada.

For the period of February 16, 2002, to March 22, 2002, Southside Bank records for account # 1421255, in the name Independence 2000 America, Inc., d/b/a Telecom 2000

Network, and account # 1406175, in the name of Allen Petty, Jr., d/b/a Telecom 2000 Network, reflected deposits totaling \$3,603,509. Currency receipts for Telecom 2000 reflect currency receipts totaling \$7,138,835. The discrepancy between these amounts is unaccounted for. Shortly after entry of the temporary restraining order of April 4, 2002, bank records indicate an attempted wire transfer by Petty in the amount of one million dollars.

The video tape introduced by the Government is entitled "Teaching the Teachers" and was created by Petty and his organization for distribution or sale. The video was shot at a new investor recruiting seminar put on by Petty and several of his veteran sponsors at the Holiday Inn in Tyler, Texas. The video begins with Petty giving a Christian devotional and explaining that Jesus has opened his eyes to the Telecom 2000 Network concepts as a way of expressing love for his fellow man by providing a path to financial independence. Petty then goes on describes his investment scheme with the aid of genealogy tables wherein the relationships between investors can be described in degrees of consanguinity.

During his explanation of Telecom 2000, Petty emphasizes that the initial investment in the program is for the purchase of a "business," not communications services. Petty bluntly state that the telephone services that accompany the program are simply because the government wants to see a product involved with any business. Thus, Petty explains, the phone services are incorporated into the program to keep from "raising any red flags." The business the investor purchases provides the investor with access to literature and telemarketing services (eg. the fourteen minute recording and conference calls) to recruit new

investors. However, beyond driving the recruitment of new investors, Telecom 2000 provides no other product or services to its investors or other customers.

Petty goes on in the video to describe the "details" of his program in what at best can be characterized as doublespeak, all the while emphasizing that investors should not question how their investment returns are calculated because answering such questions distract Petty from his true focus of earning them money. Petty is joined in his sales pitch by questions and testimonials from his veteran investors/sponsors. What does become clear, however, through Petty's description of the details of the program is that old investors are paid their returns from funds contributed by new investors. Petty then ends his presentation much like he began, casting Telecom 2000 as a means to provide financial independence to all those an investor loves enough to share it with.

IV.

In response to the Governments evidence, Petty, through counsel, makes three arguments. First, Petty argues that because most of the assets and accounts sought to be restrained in this case are held in the corporate name of Telecom 2000, they are not properly subject to forfeiture. This simply is not the case. Corporate entities are frequent tools of those engaged in fraud. *See United States v. Deavors*, 219 F.3d 400, 401 (5th Cir. 2000); *United States v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996). Furthermore, the criminal forfeiture statutes sweep broadly to capture any property constituting or derived from the criminal violation directly or indirectly. *See* 18 U.S.C. § 982(a).

Second, relying on the testimony of an expert witness he offered at the hearing, Petty asserts Telecom 2000 is a legitimate telecommunications/marketing business, just like AT&T or Sprint, and therefore the Government does not have substantial probability of succeeding on the issue of forfeiture. Petty's expert witness, Robert Bailes, is a certified public accountant who had reviewed no bank or business records of Telecom 2000. As demonstrated on cross-examination, the sole basis for Bailes opinion that Telecom 2000 was a legitimate business was what he had been told the business consisted of the day before the hearing by Petty and Petty's counsel. Neither had Bailes seen the video offered by the Government in this case. Furthermore, in the video introduced by the Government, Petty himself dispels any belief that Telecom 2000 is a telecommunications/marketing business as he now argues before the Court. In his own words, Petty describes Telecom 2000 not as a legitimate business, but as a classic Ponzi scheme. *See Deavours*, 219 F.3d at 402 (defining a Ponzi scheme).

Finally, Petty argues that an injunction is improper in this case because the Government has not put forward one dissatisfied investor or victim of the alleged scheme. The fact the pyramid scheme operated by Petty has not yet collapsed is irrelevant. As the Fifth Circuit explained in *Deavours*, the fact that an embezzler has not exhausted the funds he has stolen and can return the funds at the time he is caught is of no legal consequence; he is nevertheless an embezzler to full extend of the amount he took. 219 F.3d at 402-03. Here, the fact that Petty's scheme still retains some degree of liquidity is fortunate, if it is anything.

listed below, real or personal, or chose in action, without prior approval of the Court upon notice to the United States and an opportunity for the United State to be heard, except as specified in this Order. The property subject to this Order includes, but it not limited to, the following:

1. Checking account # 1421255, in the name of Independence 2000 Amercia, Inc., d/b/a Telecom 2000 Network, at Southside Bank, Tyler, Texas;
2. Checking account # 1422294, in the name of Face to Face Ministries, at Southside Bank, Tyler, Texas;
3. Checking account # 1421646, in the name of The Church of Jesus Christ's Disciples, an Unincorporated Church, a.k.a. Christian Disciples International, at Southside Bank, Tyler, Texas;
4. Checking account # 1406175, in the name of Allen Petty Jr., d/b/a Telecom 2000 Network, at Southside Bank, Tyler, Texas;
5. Packages addressed to Allen Petty, Jr., a.k.a. Al Petty, or Telecom 2000 Network, located at Federal Express, 1300 A. East Whaley, Longview, Texas;
6. Packages addressed to Allen Petty, Jr., a.k.a. Al Petty, or Telecom 2000 Network, located at United Parcel Service (UPS), 1709 East Whaley, Longview, Texas.

Further, this order continues to apply with equal force and effect to restrain the transfer or disposition of the proceeds from said property.

V.

Based on the facts described above, the Court FINDS a substantial probability the Government will prevail on the issue of forfeiture in this case, in that there is a substantial probability it will convince a jury beyond a reasonable doubt that Petty violated 18 U.S.C. §§ 1341, 1343, 1956, or 1957. The Court further FINDS that failure to enter a preliminary injunction in this case will result in the property being destroyed, removed from the jurisdiction of the Court, or otherwise made unavailable for forfeiture. Finally, the Court FINDS that the need to preserve the availability of the property involved through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.


Accordingly, it is hereby ORDERED that the temporary restraining order entered in this matter on April 4, 2002, is converted into a preliminary injunction to be effective for a period of ninety days, unless such period is extended by the Court upon a showing of good cause or unless an indictment or information is filed in connection with this matter. It is further ORDERED that Allen Petty, Jr., a.k.a. Al Petty, his agents, employees, attorneys, family members and those persons in active concert or participation with them, and any other persons having a possessory interest in his property, be and are hereby ENJOINED AND RESTRAINED from selling, assigning, pledging, distributing, giving away, encumbering, or otherwise participating in the disposal of (by transfer of stock or otherwise) or removal from the jurisdiction of this Court, with the intent to conceal or hide, or to remove from any checking or savings account, all or part of their interest, direct or indirect, in the property

It is further ORDERED that the funds contained in the bank accounts subject to this order draw interest or that the funds in said accounts be transferred into the registry of the Court where upon the Clerk of this Court is ordered to maintain the funds in federally insured, interest bearing accounts.

It is further ORDERED that pursuant to Fed. R. Civ. P. 65(c), the United States of America is not required to post bond or other security.

It is further ORDERED that a copy of this Order shall be recorded in the county land records where any of the above-described property is located.

ORDERED and SIGNED this 17th day of April, 2002.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE